BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

RONALD D. LAMAR) Claimant	
VS.	Docket No. 177,822
BOEING MILITARY AIRPLANES Respondent	DOCKET NO. 177,022
AND	
AETNA CASUALTY & SURETY COMPANY Insurance Carrier	

ORDER

Claimant appeals from a January 31, 1995 Order by which Administrative Law Judge John D. Clark denied claimant's request for penalties.

ISSUES

Should claimant be awarded penalties pursuant to K.S.A. 44-512(a)?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties the Appeals Board finds the Order by the Administrative Law Judge denying penalties should be affirmed.

This appeal concerns the specificity required in a demand for payment of compensation made pursuant to K.S.A. 44-512(a). The letter demand at issue in this case was sent November 1, 1994 after respondent failed to pay weekly benefits required by an agreed upon Award. The agreed upon Award was entered October 14, 1994 and approved by the Appeals Board pursuant to K.S.A. 44-551, as amended S.B. 59, 1995, on October 26, 1994. The demand letter was sent November 1, 1994 and a hearing was held January 31, 1995. The parties agree that a total of eight (8) weeks of benefits were past due and not paid within twenty (20) days of the written demand.

Respondent initially moved to dismiss this appeal on grounds the Order entered was not an appealable order. The Appeals Board finds the Order was a final appealable order. K.S.A. 44-551, as amended S.B. 59, 1995, and Stout v. Stixon Petroleum, 17 Kan. App. 195, 836 P.2d 1185, rev. den. 251 Kan. 942 (1992).

Respondent next argues and the Appeals Board agrees that the demand letter sent in this case lacks the requisite specificity to be enforceable. K.S.A. 44-512(a) provides that the demand must set forth ". . . with particularity the items of disability and medical

compensation claimed to be unpaid and past due . . . ". The letter at issue in this case demanded ". . . payment of any and all benefits ordered paid . . . and . . . compliance with all other provisions in the enclosed order." The demand did not set forth the items of disability and compensation claimed to be unpaid. The Order enclosed with the demand was an Order approving the Award as required by K.S.A. 44-551, as amended S.B. 59, 1995, for orders not appealed. The Order did not specify what was unpaid.

It seems clear in this case that respondent should have known what items were unpaid. No payments have been made under an agreed upon award. However, the statute requires that the items claimed to be past due be set forth with particularity. This requirement eliminates any issue about whether a respondent knew or should have known what benefits were past due. While in this case we expect respondent knew what was due, the demand letter sent in this case did not set forth the items claimed unpaid and past due. The Appeals Board is compelled to adhere to and enforce the statute. The demand letter is therefore, unenforceable.

WHEREFORE, the Appeals Board finds that the Order of Administrative Law Judge John D. Clark dated January 31, 1995 should be and the same is hereby affirmed. IT IS SO ORDERED.

Dated this day	of May, 1995.	
	BOARD MEMBER	
	BOARD MEMBER	
	BOARD MEMBER	

c: Lawrence M. Gurney, Wichita, Kansas Frederick L. Haag, Wichita, Kansas John D. Clark, Administrative Law Judge George Gomez, Director